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No. 123,179

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STEVEN CRAIG MCVAY, AMY CERATO, KENNETH RAY SETTER, and ANTHONY STOBBE,

Petitioners,

v.

JOSH COCKROFT, in his official capacity as Oklahoma Secretary of State, and GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General,

Respondents.

OKLAHOMA'S RESPONSE TO AMICUS CURIAE BRIEF OF THE HONORABLE ROBERT HENRY

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INTRODUCTION

Senate Bill 1027 ("SB 1027") places reasonable guardrails on Oklahoma's initiative petition process, empowering voters from more counties in the state to have a voice. To this end, SB 1027 most prominently sets proportional, uniform county signature caps, based on each county's vote totals, incentivizing signature gathering efforts in both urban *and* rural communities.

Amicus Curiae Robert Henry, a former Oklahoma Attorney General and former Tenth Circuit judge, broadly asserts in opposing SB 1027 that any adjustment to the initiative petition process "disenfranchises" voters, "abolish[ing] their right" to participate in direct democracy. Henry Br. at 4–5. But in doing so, Henry conflates the initiative petition process with the fundamental right to cast votes in primary and general elections. Circulating or signing a petition as part of the initiative petition process and the right to cast ballots on election day are not interchangeable rights deserving of the exact same treatment, and Henry has provided no legal support saying so.

For the reasons set forth below, SB 1027 is in lockstep with the intent of the Framers of the Oklahoma Constitution, it preserves and bolsters the petition power of urban and rural communities, and it does not implicate the same fundamental rights analysis afforded to voting itself.

ARGUMENT

I. SB 1027 promotes the goals of the Framers of the Oklahoma Constitution.

Amicus Henry rightly relies on the intent of the Framers of the Oklahoma Constitution in challenging SB 1027's reforms. Undeniably, the founders of our State strongly believed that "the power of the people was paramount" and "the right of voters to decide issues that affected their lives should be protected." Henry Br. at 5. And equally important to those founders were "concerns about big government and corporations intruding upon and controlling their lives." *Id.* at 6.

State Defendants agree with this and submit that, contrary to Amicus Henry's views, these legitimate concerns held by Oklahoma's founders actually counsel for the adjustments enshrined in

SB 1027. Before SB 1027's reforms, for instance, signature gatherers "had no incentive to request signatures in non-urban areas . . . [resulting] in them ignoring the opinions and ideals of people from those areas." Respondents' Appendix D, Kelsey Decl. at ¶ 5. This was particularly true with respect to the recent medical marijuana petition—the initiative has "immensely and negatively impacted" rural industries and was placed on the ballot with little rural input. *Id.* ¶ 6. And so on, as Oklahoma's four declarants attest. This exclusion of rural voters from the petition process is hardly what the founders intended in establishing the initiative petition process. The Framers' emphasis on direct democracy surely applies to all Oklahomans, not just metropolitan voters.

In short, SB 1027 serves as a "welcome balance to upright the petition initiative process" and better protects and promotes the rural voter's voice. *Id.* ¶ 5. Surely a *more* diverse representation among the counties in the petition process better reflects the goals of the founders than an alternative that focuses almost exclusively on urban or metropolitan sentiment. By instituting uniform signature caps across all counties regardless of population, signature gatherers are incentivized to circulate petitions in rural counties and gather (or fail to gather) signatures across the state, thus better reflecting the will of all Oklahomans. In no universe does this conflict with the Framers' view.

SB 1027's reforms also dovetail with the founders' "concerns about big ... corporations intruding upon and controlling their lives." Henry Br. at 6. Per Petitioners' own witness, "national organizations . . . often provide critical funding and expertise for ballot initiatives." Petitioners' Appendix B, England Decl. at ¶ 37. Indeed, "there has not been a single successful initiative petition in Oklahoma over the past decade that has qualified for the ballot without hiring a professional signature gathering firm." *Id.* ¶ 24. It is inconceivable that the founders would have been comfortable with such large-scale and out-of-state corporate interference in Oklahoma referenda and initiatives. *See* Henry Br. at 6 ("The progressives saw direct democracy as an obstacle to special interest group control of government." (citation omitted)). SB 1027 addresses the founders' corporate concerns by

(1) limiting petition circulation to registered voters in the state; and (2) putting voters on conspicuous notice of any corporate involvement or funding in the campaign. SB 1027, § 3. Such reasonable guardrails on campaign entities surely promote transparency in the democratic process and are in keeping with the framers' corporate skepticism in enacting Oklahoma's Constitution.

To summarize, SB 1027's reforms protect the initiative petition power in both rural and urban communities while reining in the influence of big out-of-state corporate entities, and thus align with the founders' original intent for the initiative petition process.

II. The initiative petition process should not be conflated with the right to vote.

Amicus Henry cites Article III, Section 5 of the Oklahoma Constitution for the proposition that "[a]ll elections shall be free and equal," and maintains that SB 1027 is unconstitutional to the extent that it interferes with citizens' right of suffrage. Henry Br. at 5; *see* OKLA. CONST. art. II, § 4 ("No power, civil or military, shall ever interfere to prevent the free exercise of the right to suffrage by those entitled to such right."). But SB 1027 does not regulate the right to vote; rather, it regulates a process enshrined by an entirely different constitutional provision. That is, it merely reforms the process for collecting signatures to place an initiative petition on the ballot. *See* OKLA. CONST. art. V, §§ 1–8. The right-to-vote constitutional provisions cited by Amicus Henry are irrelevant to this case.

Again, the State agrees that a citizen's right to vote is fundamental and entitled to robust protection. But suffrage rights are not strictly implicated in a challenge to initiative petition procedural reforms. Courts across the country have clarified that the fundamental right to vote is distinct from the right to participate in the initiative petition process. *See Kendall v. Balcerzak*, 650 F.3d 515, 524 (4th Cir. 2011) (while "ballot initiatives or referenda . . . do enjoy some measure of constitutional protection," a challenge to the initiative petition process "does not implicate the right to vote"); *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 296 (6th Cir. 1993) (discussing the absence of authority for the proposition that "signing a petition to initiate legislation is entitled to the same

protection as exercising the right to vote"); *see also Pony Lake Sch. Dist. 30 v. State Comm. for the Reorganization of Sch. Dists.*, 710 N.W.2d 609, 623 (Neb. 2006) ("the partial reservation . . . of the right of initiative or referendum in a state constitution does not violate a fundamental right to vote"); *Kelly v. Macon-Bibb Cnty. Bd. of Elections*, 608 F. Supp. 1036 (M.D. Ga. 1985) (initiative petition challenge was not a "right to vote case" because "referendums, unlike general elections for a representative form of government, are not constitutionally compelled"); *Skrzypczak v. Kauger*, 92 F.3d 1050, 1053 (10th Cir. 1996) (finding no "establish[ed] right to have a particular proposition on the ballot").

In conflating the right of participation in the initiative petition process with the right to vote, Amicus Henry overstates his case. SB 1027 reforms only the preliminary petition-crafting and signature-gathering stages of the initiative petition process, not the voter's right to go to the ballot box and exercise his or her right to vote in an election. State Defendants agree that the right to vote is fundamental and deserves zealous constitutional protection. But, as various courts have found, SB 1027 does not implicate or run afoul of that fundamental right; it merely reforms a preliminary step in the voting process. In the end, SB 1027 does not violate the constitutional provisions Amicus Henry puts forward enshrining the right to vote.

III. SB 1027 will provide more Oklahomans better access to the state's democracy.

Amicus Henry and State Defendants are yet again aligned with respect to the initiative petition process's importance and efficacy. The difference is in the application here. The State maintains, with substantial testimonial support, that SB 1027 will promote more widespread involvement in the process (more democracy) by better incorporating rural communities into the signature-gathering process. Henry makes no effort whatsoever to address the voluminous and substantial rural concerns with Oklahoma's initiative process, despite those concerns being front-and-center of the debate over the law. With respect, it is difficult to take Henry's complaint about the allegedly "repugnant" means chosen to fix a problem seriously when he refuses to even acknowledge or address the problem itself.

Henry Br. at 4. Does the former Attorney General have evidence to show that the problem is not real—*e.g.*, evidence showing that rural voters are currently involved in the signature-gathering process in a substantial way? Does he have an alternative solution? Did he present this evidence or the solutions to his own representatives in the Legislature, or to the Legislature as a whole?

Amicus Henry points to past successful initiatives that have allegedly positively impacted the State, but he has pointed to no evidence that SB 1027's reforms will negatively impact future campaigns. *See id.* at 8. Henry provides no evidence that these petitions could not also be successful under SB 1027's revised process. If the initiatives were as popular and beneficial as Henry claims, does it not stand to reason that they could also have been successful under the new procedures? And surely a scheme that incentivizes more counties' involvement in the signature gathering process will continue to produce ample future initiatives.

Again, imbedded in Amicus Henry's mention of past successful initiatives is the erroneous proposition that SB 1027 is "repugnant" because it disenfranchises Oklahomans in counties where the cap has been met. *Id.* at 4–5. Specifically, Henry claims that SB 1027 is an "immediate reduction in the pool of eligible initiative petition signers from 2,470,437 to 132,627, excluding 95 percent of the state's registered voters," and "abolishes their right to initiate legislation or amend the Constitution." *Id.* As the State has explained in response to another amicus brief, this is hyperbole, through and through. Any Oklahoman who wishes to speak in favor of a petition or gather signatures may do so under SB 1027. Even people in counties where the cap has been exceeded may still use their voice and efforts to gather signatures elsewhere, to their hearts' content. Moreover, SB 1027 does not prohibit so-called "buffer" signatures from being collected. Okla. Resp. at 7. So even if a person is in a county where the cap has been met, they may still sign and have a good likelihood of their signature mattering. *See, e.g.*, Pets.' App. B, ¶ 21 (arguing that "initiative petition campaigns need to collect a substantial buffer of signatures above the required 15% or 8% thresholds - potentially even twice that amount").

And to the extent that their signatures do not matter, because far more signatures than the cap have been collected, this would indicate that the petition has a strong likelihood of getting on the ballot. In sum, where a person's signature in support of a petition might matter least is when the question has the *most* chance of moving to the next step. This is hardly a "disenfranchise[ment of] 2.3 million registered voters." Henry Br. at 4–5.

SB 1027 will provide more Oklahoma counties with better access to the state's democratic process. And Amicus Henry's examples of past successful petitions, alone, cannot prove negative future harm to forthcoming petitions.

CONCLUSION

If this Court decides that original jurisdiction is appropriate, it should deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the OKLAHOMA'S RESPONSE TO AMICUS CURIAE BRIEF OF THE HONORABLE ROBERT HENRY was mailed this 14th day of July 2025, by depositing it in the U.S. Mail, postage prepaid to:

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